



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732 and 734

[Docket No. 210527-0116]

RIN 0694-AF47

Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the United States Munitions List (USML); Notifying the Public of the Transfer of Jurisdiction of Certain Technology and Software as a Result of a Vacated March 6, 2020 Injunction

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTIONS: Notification of vacated court order.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this notification to the public concerning the transfer of jurisdiction of certain “software” and “technology” as a result of action by the Court of Appeals for the Ninth Circuit vacating a March 6, 2020 preliminary injunction by the district court in *Washington v. U.S. Dep't of State*, No. 20-35391, 2021 WL 1621320, 2021 U.S. App. LEXIS 12448 (9th Cir. Apr. 27, 2021). Pursuant to that decision, issued on April 27, 2021, the mandate of the Ninth Circuit was issued on May 26, 2021 and district court’s injunction was vacated. This notice also includes guidance to persons with technology or software that was previously retained on the U.S. Munitions List (USML) and controlled under the International Traffic in Arms Regulations (ITAR) pursuant to the March 6 district court order, but which is now subject to the jurisdiction of the Export Administration Regulations (EAR).

DATES: The district court injunction of March 6, 2020 was vacated on May 26, 2021. As of May 26, 2021, the “technology” and “software” that meets the criteria in section 734.7(c) is “subject to the EAR” and is no longer controlled under the ITAR.

FOR FURTHER INFORMATION CONTACT: Steven Clagett, Office of Nonproliferation Controls and Treaty Compliance, Nuclear and Missile Technology Controls Division, tel. (202) 482-1641 or e-mail steven.clagett@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Court Order of March 6, 2020

On March 6, 2020, the U.S. District Court for the Western District of Washington issued an order preliminarily enjoining the U.S. Department of State from implementing or enforcing the final rule entitled International Traffic In Arms Regulations: U.S. Munitions List Categories I, II, and III, 85 FR 3819 (Jan. 23, 2020) “insofar as it alters the status quo restrictions on technical data and software directly related to the production of firearms or firearm parts using a 3D-printer or similar equipment.” *Washington v. U.S. Dep’t of State* (Case No. 2:20-cv-00111-RAJ).

Court Order of March 6, 2020 vacated by Ninth Circuit decision issued on April 27, 2021

On April 27, 2021, a panel of the United States Court of Appeals for the Ninth Circuit (Case No. 20-35391) issued a decision that vacated the district court’s order enjoining the Department of State’s Final Rule removing 3D-printed guns and their associated files from the USML; however, the preliminary injunction remained in effect until the mandate of the Ninth Circuit for this decision was issued on May 26, 2021. Until the entry of the mandate, all persons engaged in manufacturing, exporting, temporarily importing, brokering, or furnishing defense services related to ‘technical data and software directly related to the production of firearms or firearm parts using a 3D-printer or similar equipment’ were required to treat such technical data and software as listed on the USML and controlled by the ITAR.

On May 26, 2021, the mandate of the Ninth Circuit was issued, and the entirety of the Department of State's final rule published in the *Federal Register* at 85 FR 3819 went into effect.

As a result of the vacatur of the injunction, any request for licenses of "technology" and "software" that fall under the U.S. Department of Commerce regulations, 15 CFR 732.2(b) and 734.7(c) (added by the Commerce January 23, 2020 rule, entitled Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the USML; 85 FR 4136, Jan. 23, 2020), should be directed to the U.S. Department of Commerce because this "technology" and "software" are subject to the Export Administration Regulations (EAR).

BIS strongly encourages any person with "technology" or "software" that may meet the criteria in section 734.7(c) of the EAR to review those provisions in the Commerce January 23, 2020 rule closely, as well as all other applicable EAR provisions. In anticipation of the dismissal of the case, BIS updated Frequently Asked Questions (FAQs) posted on the BIS website to add twelve FAQs to assist public understanding of section 734.7(c), including addressing application questions. These FAQs are available on the BIS website at <https://www.bis.doc.gov/index.php/documents/policy-guidance/2572-faqs-for-the-commerce-category-i-iii-firearms-rule-posted-on-bis-website-7-7-20/file>. For instance, those FAQs make clear that a BIS license is required prior to posting on the Internet of "any file, including any CAD file, that can be processed by a software program into an electronic format, such as a CAM file, with no or minimal additional information or manipulation from the operator(s), and that ... once converted will be in an executable code for the production of a firearm frame or receiver or complete firearm."

BIS also strongly encourages any person with questions regarding section 734.7(c), which they believe are not addressed sufficiently in the FAQs on the BIS website, to contact BIS for additional guidance. See the BIS contact information under the For Further Information Contact section of this notice. In addition, if a person is unsure whether the criteria of section 734.7(c) are met, including whether the “technology” or “software” is ready for insertion into a computer numerically controlled machine tool, additive manufacturing equipment, or any other equipment, persons with such “technology” or “software” can submit an official classification request to BIS using the free online submission system, called SNAP-R, available on the BIS website, to receive an official classification of the “technology” or “software.” For additional information on SNAP-R, see <https://www.bis.doc.gov/index.php/licensing/simplified-network-application-process-redesign-snap-r/getting-started-with-snap-r>. The person submitting the official classification should note in the classification request that the classification is being submitted to determine whether the “technology” or “software” meets the criteria in section 734.7(c).

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